



POLICE DEPARTMENT

September 29, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Detective Dwight Hovington
Tax Registry No. 891641
100 Precinct Detective Squad
Disciplinary Case No. 81378/05

The above-named member of the Department appeared before me on April 18 and June 2, 2008, charged with the following:

1. Said Detective Dwight Hovington, assigned to the 100 Precinct Detective Squad, while off duty, on or about December 25, 2004, at a location known to this Department, in [REDACTED] County, with intent to harass, annoy or alarm another person, known to this Department, said Detective did strike, shove, kick, or otherwise subject such other person to physical contact, or attempt to threaten to do the same.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
N.Y.S. PENAL LAW SECTION 240.26(1) – HARASSMENT IN THE SECOND DEGREE

2. Said Detective Dwight Hovington, assigned as indicated in Specification No. 1, while off duty, on or about the date and location indicated in Specification No. 1, did intentionally place or attempt to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, shotgun, machine gun or other firearm.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
N.Y.S. PENAL LAW SECTION 120.14(1) – MENACING IN THE SECOND DEGREE

3. Said Detective Dwight Hovington, assigned as indicated in Specification No. 1, while off duty, on or about the date and location indicated in Specification No. 1, at a location known to this Department, in [REDACTED] County, failed to safeguard his weapon at all times, as required.
(As amended)

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P.G. 204-08, Page 2, Paragraph 7 – UNIFORMS AND EQUIPMENT

4. Said Detective Dwight Hovington, assigned as indicated in Specification No. 1, while off duty, on or about the date and location indicated in Specification No. 1, after being involved in an unusual police occurrence that occurred outside the City, to which he was a participant, did fail and neglect to promptly notify the Operations Unit, as required.

P.G. 212-32, Page 1 (Note) – COMMAND OPERATIONS

5. Said Detective Dwight Hovington, assigned as indicated in Specification No. 1, while off duty on or about July 25, 2005, with intent to harass, annoy or alarm another person, known to the Department, said Detective did strike, shove, kick or otherwise subject such other person to physical contact, or attempt or threaten to do the same. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
N.Y.S. PENAL LAW SECTION 240.26(1) – HARASSMENT IN THE SECOND
DEGREE

6. Said Detective Dwight Hovington, assigned to the 100 Precinct Detective Squad, while off duty, on or about November 9, 2005, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective did use a Department computer to conduct a BADS inquiry against an individual known to the Department for non-Department purposes.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
P.G. 203-06, Page 1, Paragraph 15 – PERFORMANCE ON DUTY –
PROHIBITED CONDUCT

7. Said Detective Dwight Hovington, assigned to the 100 Precinct Detective Squad, while off duty, on or about December 25, 2004, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective did recklessly engage in conduct which created a substantial risk of serious physical injury to another person, to wit: said Detective produced his service firearm during an argument with a person known to the Department resulting in the weapon discharging.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
N.Y.S. PENAL LAW SECTION 120.20 – RECKLESS ENDANGERMENT IN
THE SECOND DEGREE

8. Said Detective Dwight Hovington, assigned to the 100 Precinct Detective Squad, while off duty, on or about July 25, 2005, in the confines of [REDACTED] County, having been involved in an off duty incident with a person known to the Department, who was also a member of the service, did fail and neglect to notify the Operations Unit, as required. *(As amended)*

P.G. 212-32, Page 1, Paragraph 2 – OFF-DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

9. Said Detective Dwight Hovington, assigned to the 100 Precinct Detective Squad, while off duty, on or about October 7, 2005, in the confines of [REDACTED] County, did fail and neglect to properly safeguard his firearm, to wit, a Kahr K-9, Serial No. AR1436.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS – GENERAL REGULATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specifications 6, 8 and 9, and Not Guilty of Specifications 1, 2, 3, 4, 5, and 7.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Anayansi Parris (Parris), Antonia Parris (Antonia), and Sergeant Anthony Bocola as witnesses. In addition, [REDACTED] County Police Officer Douglas Bose's out-of-court testimony was admitted into evidence as Court Exhibit (CX) 1.

Detective Anayansi Parris

Parris, an 18-year member of the Department, is currently assigned to the Vice Enforcement Division. She testified that she became romantically involved with the Respondent in 2001. At the time, she owned a house on [REDACTED] in [REDACTED] County, where she lived with her daughter, Antonia Parris. In August or September of 2002, the Respondent moved into the house. Parris and the Respondent planned on getting married. Parris was having financial problems at the time, and the Respondent suggested that she place the house in his name since he had better credit and could get a lower mortgage rate. In June or July of 2003, the deed was transferred to the Respondent.

Parris testified that at some point her relationship with the Respondent started to deteriorate because of financial problems, physical confrontations, the Respondent's infidelity, and medical issues. Parris explained that she was diagnosed with an [REDACTED] [REDACTED]. In addition, although she and the Respondent had agreed to split the bills in half, she ended up paying all the bills on her own. Meanwhile, according to Parris, the Respondent kept money in his bank account that he did not tell her about. Parris stated that the Respondent's sister told her that the Respondent never intended on marrying her and only wanted to get the house for his own financial gain.

On December 24, 2004, while retrieving a Christmas tree ornament in the garage, Parris found bags of gifts and cards from women to the Respondent. She also found photographs of the Respondent with other women. At approximately 3:00 a.m. the next day (Christmas Day), Parris was sleeping in her bedroom when the Respondent woke her. Parris stood by the foot of the bed and confronted the Respondent about his infidelities and hiding money from her. She told the

Respondent that she was leaving him. Her head was down and she was crying. She told the Respondent, "If you don't stop it, either way someone is going to end up killing you."

Parris testified that the next thing she knew, the Respondent struck her with his arm against the chest, knocking her over the bed. She landed on the floor, scraping the side of her left leg on the metal bed frame and a piece of exercise equipment. Meanwhile the Respondent was standing with a bag at his desk, which was located three or four feet from where Parris fell. Parris testified that as she wiped her eyes and stood up, the Respondent pulled his firearm out of the bag, pointed it at her, and walked toward her. Parris said, "I can't believe you. You're wrong, and you are going to shoot me?" The Respondent was standing within a foot of Parris when she lifted her left hand and attempted to push the gun away, away from the Respondent's body. The Respondent continued to point the gun in Parris' direction, pointing it at her chest. After Parris unsuccessfully attempted to push the gun away a second time, she pushed the Respondent with both hands. Whenever Parris pushed the Respondent's arm, the Respondent resisted and brought the gun back in her direction. Parris testified that she is 5'6" tall, and the Respondent is approximately seven inches taller and significantly stronger.

Parris stated that she and the Respondent were struggling back and forth when she slipped on a pile of magazines and lost her balance. As she was falling back onto the bed, she heard the gun discharge. Her eyes were closed at the time, and she believed that she had been shot. At that point, she heard Antonia calling for her from the downstairs floor of the house. The Respondent informed Antonia that Parris was all right, and then he walked out of the bedroom. After the Respondent left the bedroom, Parris walked toward Antonia and told her she was all right. She testified that she dozed off and was "essentially sleeping." She did not suffer any powder burns.

Parris testified that she notified neither this Department nor the [REDACTED] County Police Department of the December 25, 2004, incident. She said that she was in shock at that point and did not know what to do.

According to Parris, the day after the firearms discharge, as they were driving, Antonia asked her, "Mom, what happened? Dwight tried to shoot you?" Parris replied yes, but said she did not want to talk about it. She then pulled over and began crying.

Parris testified that in January 2005, she received a letter from the Respondent's attorney stating that she owed the Respondent rent money. When Parris confronted the Respondent about the letter, the Respondent told her that he would make notifications to the Internal Affairs Bureau since he was her landlord and IAB needs to be notified whenever a member of the service becomes involved in landlord-tenant court.

Parris stated that she planned on moving out of the house, but was still living there on July 25, 2005. At approximately 7:20 p.m. that day, the Respondent was working out with a punching bag in the garage. Parris went into the garage to confront the Respondent about his continuing infidelities. She said "you've really gone too far with messing around outright and" Antonia and [REDACTED] the Respondent's son, "know it. Now you are making me look and feel like a total asshole." The Respondent "says whatever like he normally says, that's your problem." Parris said, "I have to hurry up and get the 'F' out of this house." She then walked out of the garage, slamming the door behind her. Parris testified that the Respondent, still wearing boxing gloves, followed immediately behind her. As Parris "swung around," she "got punched in the chest," knocking her down and causing her to scrape her left side on a dog cage that was located approximately a foot from the garage door. As a result, according to Parris, she suffered a "big, nasty cut" on her buttocks. Parris described the cut as circular in shape, slightly

larger than a nickel. The Respondent carried Parris to the bathroom and tried to help her wash the cut. At that point, Antonia entered the house and walked upstairs to the bathroom. Antonia asked the Respondent if he hit her mother. Parris stated that the Respondent merely sighed and looked away.

Parris testified that the July 25, 2005, incident caused her a lot of pain, but she neither sought medical attention nor made any notifications. She did not miss any work as a result of the incident and reported for duty on her regularly scheduled tour the following night. Parris explained that she did not have money to move out of the house, and she was waiting to receive a pension loan. In addition, Antonia was in high school at the time, and Parris did not want to move out of the school district.

In the fall of 2005, Parris and the Respondent were still living together, and they were preparing for the Respondent's son, [REDACTED], to move in with them. In October 2005, Parris met with [REDACTED]'s mother [REDACTED] to discuss [REDACTED]'s custodial arrangements. [REDACTED] was a civilian supervisor in the Department's Medical Division. The Respondent wanted [REDACTED] to move in with him at [REDACTED], and he wanted Parris' help "to portray like a happy family" before Family Court. Parris told [REDACTED] that she was leaving the Respondent, and mentioned the problems she had been having with the Respondent. On October 7, 2005, [REDACTED] informed her commanding officer, Inspector O'Hollaran, that "she felt there were going to be some problems this weekend," as well as Parris' allegation that the Respondent had tried to shoot her. For her failure to report, Parris forfeited five penalty days after a Department trial.

On cross-examination, Parris testified that she was ultimately able to rent an apartment from a friend who did not make her pay a security deposit. She explained that she did not qualify to take out an emergency loan from her deferred compensation plan because she had

already taken out too much in a pension loan. She stated that she received a pension loan in October 2005 only because she asked her union for help in obtaining one. She explained that she did not ask the union for help before then because she did not know that the union provided that kind of assistance. One more reason Parris provided for not moving out earlier was that the Respondent would not let her.

Parris agreed that every day that she went to work she had the opportunity to tell people about what was going on at home. She opted, however, not to reveal the situation to anybody. She claimed that she had no choice but to continue having a sexual relationship with the Respondent. According to Parris, she told the [REDACTED] police that the Respondent raped her, but "they didn't put that in the report for [REDACTED] County."

Parris testified that aside from [REDACTED] the only other person that she told about her domestic situation was a friend, who worked as a gas station attendant and had loaned money to Parris for Antonia's Sweet Sixteen party. In addition, the friend tried to get Parris to move in with him and his cousin, but Parris did not accept the offer because he lived in a different school district. Parris reiterated that she did not want Antonia to change schools.

Parris testified that in the third or last week of September 2005, she told her captain, Michael Ameri, about the December 2004 firearms discharge. According to Parris, Ameri did not do anything about it. Parris neither notified the [REDACTED] County Police Department nor sought medical attention after any of the domestic incidents involving the Respondent. It was only after the October 2005 notification to the Department that the police came to the house. At that point, photographs were taken of Parris and the bedroom. The police found a hole in the bedroom ceiling. Parris did not know if a bullet or shell casing was ever found. Parris did not look for a shell casing at the time of the discharge.

In November 2005, Parris brought a civil suit against the Respondent. She is suing the Respondent for fraudulent conveyance of the residential deed, income that the Respondent made from the house, assault, and intentional infliction of emotional distress. She did not know exactly how much money she is suing for. The Respondent is counter-suing. Parris twice declared bankruptcy, most recently right before the Respondent moved into the house. She stated that after the house was transferred to the Respondent, the mortgage was in his name. According to Parris, however, she continued to pay the mortgage herself. Parris testified that approximately \$15,000 was put in her bank account at the time of the transfer, but she could not keep that money and had to return it to the company that the Respondent "got together with to do the transaction."

Parris stated that the Respondent's gun was black and was not in a holster. She admitted, however, that at the Respondent's criminal trial in ██████████ County District Court in June 2006, she testified that she was not sure of the gun's color or whether or not the gun was holstered.

Parris testified that her primary assignment at the Vice Enforcement Division is working as an undercover prostitute-impersonator. She has been involved in the arrest of close to a thousand johns. She denied that she was an "actress," but she agreed she has been able to convince others that she is, in fact, a prostitute.

On re-direct examination, Parris testified that she noticed the hole in the bedroom ceiling as she was lying in bed on the evening of December 25, 2004. Several times, the Respondent covered the hole in the ceiling with plaster, but the hole always re-appeared. On October 7, 2005, the hole was open.

Upon questioning by the Court, Parris explained that when she informed Ameri about the firearms discharge, she "told him what happened, and I told him that I was coming in to let the

Department know what was going on and what I was going through.” According to Parris, she also told Ameri the date that she planned on coming forward to officially notify the Department. She claimed that Ameri thanked her for speaking to him, adding, however, “but you never told me this.”

Antonia Parris

Antonia Parris is 19 years old and has finished her freshman year in college. She is majoring in neuroscience and minoring in political science. She is involved in various student organizations, including student government.

In December 2004, Antonia was 15 years old, and her mother, Parris, was in a romantic relationship with the Respondent. Antonia testified that from late 2004 through the middle of 2005, Parris’ relationship with the Respondent was “kind of getting rocky.”

Antonia stated that on the evening of December 24, 2004, she fell asleep in the den, which was on the downstairs level of the house. She later woke up to the sound of Parris and the Respondent loudly arguing upstairs. She could tell from the direction of their voices that Parris and the Respondent were in their bedroom. It was approximately 11:00 p.m. or midnight. The television in the den was on, but the volume was low. Antonia stated that she heard her mother say multiple times, “Are you going to shoot me?” According to Antonia, as she walked toward the staircase, she heard “a loud pow, like a pop.” She testified that she knew “for a fact” that the sound was a gunshot. Antonia yelled upstairs to see if Parris was okay, and the Respondent replied that she was. Antonia returned to the den and called her friend [REDACTED] who told Antonia to calm down and relax. Parris later came downstairs and told Antonia that everything was alright.

Antonia testified that the next day, Christmas morning, Parris was driving her to her friend [REDACTED]'s house. There was "an awkward silence," and Antonia asked, "[S]o what happened last night?" Parris "was like Dwight tried to shoot me," then began crying "and couldn't really finish." Antonia described Parris' emotional state as sad and hurt.

Antonia testified that on the evening of August 25, 2005, she went home to get her gear for karate class. When she looked into the master bathroom, she saw Parris crying over the sink with her pants halfway down and a cut on her buttocks. The Respondent was in the bedroom facing into the bathroom. When Antonia asked what happened, the Respondent replied that he had accidentally bumped into Parris and pushed her over the dog cage. Antonia stated that she did not really remember the cut, but she did remember seeing blood dripping all over Parris' buttocks.

On cross-examination, Antonia testified that she never went up the stairs at the time of the 2004 firearms discharge. She, therefore, did not see anybody holding a gun and could not see what was going on. Antonia knew that the Respondent brought his guns home from work. Although Antonia did not think Parris brought home her firearms, it was possible that she did. Antonia conceded that she did not know who was responsible for the discharge or which firearm was used that night. Antonia assumed that it was the Respondent who was holding the gun just because she heard her mother ask if the Respondent was going to shoot her. During that general time period, arguments between the Respondent and Parris had become heated on more than one occasion, and the two would say things to each other during these arguments that they would not say during normal conversation.

Antonia stated that she has neither handled a gun herself nor been around someone else while they were shooting. She conceded that her sole reference point for what a gun sounds like

comes from the movies and television. She admitted that her statement that she knew “for a fact” that the sound was a gunshot was “really not a hundred percent true” because she “made an assumption” that it was a gunshot based on movies and TV.

Antonia testified that she never reported the incident to the police or to a teacher. She did not move out of the house after the incident. Although it was rare, there were times that she was alone in the house with the Respondent.

Antonia did not actually see what happened between Parris and the Respondent on July 25, 2005. Shortly before the Respondent was arrested in October 2005, Parris informed Antonia that they were going to move out of the house.

On re-direct examination, Antonia testified that she had heard doors loudly slam in the house. The sound that she heard on December 25, 2004, was definitely not a door slamming. According to Antonia, it sounded like an explosion and had more of an echo than a slamming door.

Sergeant Anthony Bocola

Bocola, a 13-year member of the Department, is currently assigned to the Chief of Detectives Investigations Unit. In October 2005, he was assigned to investigate the Respondent’s case. He testified that during the course of the investigation he learned that on November 9, 2005, the Respondent conducted an unauthorized inquiry on a Department computer. Bocola also learned that on October 7, 2005, the Respondent failed to safeguard his off-duty firearm.

At an official Department interview, the Respondent stated that, before leaving on a vacation, he placed the firearm in a computer bag and then placed the bag in a closet. The

Respondent further stated in the interview that he normally secured his firearm in a computer bag when he was at home but would lock it in a safe when he went away on vacation. At the time, 16-year-old Antonia and 13-year-old [REDACTED] were residing in the house.

On cross-examination, Bocola testified that the Respondent made the unauthorized computer inquiry on the BADS system, which provides arrest information on individuals. The Respondent conducted the inquiry on the name "Parris." The Respondent did not indicate a first name in his inquiry. In October 2005, it was [REDACTED] County crime scene detectives who found the Respondent's gun in the computer bag.

[REDACTED] County Police Officer Douglas Bose

CX-1 is a transcript of [REDACTED] County Police Officer Douglas Bose's June 13, 2006, criminal court testimony, admitted here in evidence by stipulation of the parties.

Bose, a 20-year member of the [REDACTED] County Police Department, testified that during his 13 years assigned to the Crime Scene Section, he has worked on between 150 and 200 cases involving bullet holes. Bose stated that on October 8, 2005, he responded to Parris' house. Upon his arrival, he observed what appeared to be a bullet hole in the ceiling of the master bedroom. Bose then went to the attic, where he found a hole in the sheetrock and splintering in a wood beam. Bose believed the splintering was made by a bullet. He looked for a bullet but could not find one. He explained that he was searching for the bullet in fiberglass insulation, and this is very difficult. In addition, the only lighting that he had was a flashlight. Upon examining the house's roof line, it did not appear that the bullet exited the house. Bose took pictures of the bedroom and hole in the ceiling (see description of photos in DX-1, below).

On cross-examination, Bose testified that he did not observe any shell casings, gun powder residue, or powder burns in Parris' house. He stated that, while something other than a bullet could have caused the hole in the ceiling, based on his experience, only a bullet could have caused the splintering that he observed on the attic beam. Bose could not tell from his analysis at the scene when the firearms discharge occurred or who was responsible for it. Furthermore, he did not know if someone had gone up to the attic and removed a bullet prior to his arrival.

On re-direct examination, Bose testified that because a ceiling is not a part of a house that tends to get disturbed, he did not think the passage of time likely had any effect in this case with respect to the hole and splintering. He stated that although it did not seem that the attic had been disturbed, there was no way to be certain of this fact. A shell casing, Bose noted, would probably not be found more than nine months after a firearms discharge had taken place. There was no way of knowing if a shell casing "fell underneath something."

Photographs

The Department also placed in evidence a computer disc containing photographs taken by Bose (DX 1). The photographs were not displayed or discussed during the Department trial and were viewed by this Court for the first time during its deliberations in this case.

DX-1 contains six photographs, none of which are marked or described. One is a picture of a portion of the bedroom; the other five are pictures of what appears to be a hole through a white surface. Based on Bose's description, the picture of the bedroom (numbered MVC-0015 on the disc¹) contained in DX-1 seems to correspond with Exhibit 5 in the criminal trial.

¹ The MVC number is not stamped on the photographs themselves, but is listed in the file name under the photograph when viewed on screen.

During the criminal trial, as part of Bose's testimony, fourteen photographs were offered in evidence. Eleven photographs were received in evidence; three were not. Only two photographs of the hole appear to have gone into evidence during the criminal trial, Exhibits 10 and 11. It was noted on the record that the photograph that was Exhibit 11 was a blow-up of the photograph that was Exhibit 10 (interestingly enough Bose marked Exhibit 11 with an arrow indicating which direction is "up," which is difficult to understand given that it is a picture of the ceiling). As noted there are five pictures in DX-1 of the hole. Picture MVC-0045 appears to be a blow up of picture MVC-0055 so those two photographs seem to correspond with Exhibits 11 and 10 from the criminal trial. There is some confirmation of that by the fact that both are time stamped at the same time: "7 11:33 PM." The other photographs on DX-1 do not appear to have been part of the evidence at the criminal trial. None of the pictures on DX-1 have any notes or marking beyond the time stamp.

The Respondent's Case

The Respondent called Captain Michael Ameri as a witness and testified in his own behalf.

Captain Michael Ameri

Ameri is currently assigned to Patrol Borough Queens North. Between September 2004 and September 2006, he was Parris' Commanding Officer in the Queens Vice Enforcement Unit. During that period, Ameri had direct contact with Parris and maintained a positive working relationship with her.

Ameri testified that Parris never informed him that she had been in a dispute with her boyfriend, that her boyfriend threatened her with a firearm, or that an off-duty member of the service fired a weapon at her. Ameri stated that he did not know anything about Parris' personal life and had never before met the Respondent. Ameri testified that had the Respondent informed him of a domestic dispute and asked him not to report it, he still would have made the proper notifications.

The Respondent, Detective Dwight Hovington

The Respondent, a 21-year member of the Department, is currently assigned to the 100 Precinct Detective Squad. He has received numerous medals, been named Cop of the Month, serves as a union delegate, and is a member of the Department boxing team. He has served as team captain since 1994. He has never before been the subject of significant Departmental discipline. The Respondent was arrested as a result of the misconduct alleged in the current case. At his criminal trial, he was acquitted of all charges.

The Respondent testified that on November 9, 2005, he conducted a BADS inquiry in an attempt to locate Parris' ex-husband, whom he knew to be named [REDACTED]. The Respondent was interested in using the ex-husband as a character witness in court.

As for the specification involving a failure to safeguard his firearm on October 7, 2005, the Respondent stated that he was on vacation in Atlanta. He explained that usually when he was on vacation, he would store his firearm at work or in a safe at home. That specific vacation, however, he was running late for his flight and did not have time to drop off his firearm at his command. Furthermore, he had left the keys to his safe in his office. He, therefore, placed the firearm in his briefcase and placed the briefcase in the closet behind the safe. He testified that he

normally stored the gun in this fashion when he was at home, and October 2005 was the only time that he stored the gun in this fashion while on vacation.

The Respondent testified that he used to work as partners with Parris in the Vice Enforcement Division. They became romantically involved in September 2000, and the Respondent moved into Parris' [REDACTED] County home in the middle of 2002. The Respondent stated that initially he paid for utilities while Parris paid the mortgage.

In early 2003, the Respondent learned that Parris had filed for bankruptcy and was going to lose the house. It was the second time that Parris had filed for bankruptcy, and she did not qualify for refinancing. The Respondent and Parris realized that the house could be saved if he bought the house from her. In June 2003, the transfer of the house was completed. The Respondent stated that he did not receive any money in the transfer, but Parris received a check. The Respondent could not recall the amount of the check, but "it was in the thousands." He did not have any knowledge of Parris not being able to keep the money. After the transfer, it was agreed upon that the Respondent would continue paying the utilities, and Parris would continue with the mortgage payments. Parris, however, fell behind with the mortgage, putting the house at risk and placing the Respondent's credit in jeopardy. The Respondent, therefore, refinanced the house in September 2004. The Respondent testified that he did not take any of the money obtained in the refinancing for his personal use. Instead, the money was used to pay past bills and taxes and to purchase a new boiler system. After the refinancing, the Respondent and Parris agreed that they would each pay equal parts of the mortgage and the utilities. The Respondent stated that while he kept up his part of the financial arrangement, four or five months after the refinancing Parris started to fall behind again with her payments. The financial situation began

to affect the relationship, and the Respondent and Parris would at times argue. According to the Respondent, however, there was never physical violence between them.

The Respondent testified that he worked the night of December 24, 2004, and got home at 2:30 or 3:00 a.m. the next morning. At the time, Parris was upstairs in bed and Antonia was in the den lying on the futon. The television was on in the den, but the Respondent did not know if Antonia was asleep or awake.

The Respondent went upstairs to the bedroom and put his briefcase down. Parris was sleeping, and the two did not speak. The Respondent then went downstairs to eat something. According to the Respondent, he noticed that Antonia was sleeping by this time. After eating, the Respondent went back upstairs. When the Respondent "turned on the light or something," Parris woke up and told him, "Go back to where the fuck you came from. Go back to the bitch's house." He testified that he did not know what she meant, but explained that Parris had previously expressed suspicion that he was involved with other women.

The Respondent testified that he said something to the effect of "you have been fucking drinking," grabbed his briefcase, took a pillow off the bed, and walked toward the door. He intended to sleep in the next room. According to the Respondent, Parris snatched the pillow out of his hand and threw it at him. The Respondent walked out of the room, slammed the door behind him, set up an air mattress in the bedroom next door, locked the door, and checked his e-mail on his laptop.

A few minutes later, according to the Respondent, Parris knocked on the door and proceeded to rant and rave about him going back where he came from. The Respondent opened up the door and he and Parris proceeded to talk about finances. When the Respondent asked her when she planned on making a payment, Parris walked away. The Respondent then closed the

door and eventually fell asleep. The Respondent testified that nothing else happened during that exchange. At no point did he discharge his firearm. He stated that his gun remained in his briefcase the entire time. He further stated that neither that day nor the following days did Parris ever accuse him of using his firearm against her.

The Respondent testified that although Antonia stayed at a friend's house on weekends, she stayed in the house with the Respondent during the week. At times, the Respondent and Antonia were in the house alone together. That New Year's Eve, the Respondent, Parris, and Antonia were together at a party at Parris' brother's house. Both the Respondent and Parris usually kept a gun in the house. Parris would store her firearm in either a tote bag or in a file cabinet in the master bedroom closet.

The Respondent testified that during 2005 the financial situation got even worse. In early 2005, he hired a pre-paid legal service to send a letter to Parris demanding the back payments she owed him. Parris did not respond to the letter in any way. The Respondent kept trying to get Parris to pay. He asked her to take out a pension loan or a deferred compensation loan. Parris promised that she would look into it, but she never did. Meanwhile, the Respondent tried to refinance again, but his application was denied. In August 2005, the Respondent filed the initial stages of an eviction proceeding and had it served on Parris (see RX-A, process server's invoice, affidavit of service of eviction notice, certified-mail receipt addressed to Parris, and notice of demand for Parris to vacate the premises). After receiving the eviction paperwork, Parris confronted the Respondent in the bedroom. The Respondent discussed with Parris the pressure that the situation was placing on his finances and credit, and he explained to her that eviction was his last resort. Parris replied by stating, "Fuck you and your lawyer," and she walked out of the room.

Parris was supposed to move out of the house by September 23, 2005. As that date approached, Parris did not seem to be making any movement toward addressing the issue. The Respondent had plans to spend a week vacationing at his mother's house, and he told Parris that he wanted her out of the house by the time he returned. According to the Respondent, Parris told him that she would be out in a week. On October 6, 2005, the Respondent left for his vacation. At 2:00 a.m. the following day, he received a telephone call from a captain in Queens North Investigations informing him of Parris' allegation concerning the firearms discharge the previous December. The captain instructed the Respondent to surrender himself to the [REDACTED] County Police Department upon his return.

The Respondent described the July 25, 2005, incident as an accident, not a physical altercation. He testified that he was working out with a punching bag in the garage that day when Parris opened the door, yelled something, and then slammed the door behind her. Because a radio was playing loud music, the Respondent could not hear what Parris said. The Respondent explained that he attempted to follow Parris back into the house, but the garage door, which opened into the house from the garage, tended to stick. He could not get the door open, so he took off his boxing glove and tried the knob again. When the Respondent still could not get the door open, he pushed it open with his shoulder. He stated that he did not know that Parris was standing just on the other side of the door and right in front of the dog crate. As a result, as he pushed his shoulder into the door, Parris tumbled over the crate. Parris started screaming in pain, and the Respondent took off his other boxing glove and helped her up. The Respondent went with Parris upstairs to the master bathroom, and he helped her clean a scrape that she suffered on her hip. At one point, Antonia came upstairs and found the Respondent and Parris in the bathroom. When Antonia asked what happened, the Respondent told her that he accidentally

bumped the door and Parris fell over the dog crate. At the time, Parris did not make any sort of notification or complaint to anybody about the incident. The Respondent contended that, to his knowledge, he was not involved in an off-duty incident that day that required a notification to the Operations Unit.

The Respondent testified that Parris has brought a civil action against him. Parris is suing for assault, and is seeking to have the new deed stricken and to have the house transferred back to her.

On cross-examination, the Respondent testified that it was a wooden door that he slammed after his verbal argument with Parris on December 25, 2004. As far as he knows, the wood did not splinter, and the door lock did not become damaged, as a result of the slam. The Respondent stated that Antonia did not call upstairs to Parris while he and Parris were still in the bedroom together. He further stated that he did not call downstairs to Antonia that everything was okay.

The Respondent testified that he knew on July 25, 2005, that Parris was on the other side of the garage door, but he did not know how close to the door she was. He conceded that his BADS inquiry on November 9, 2005, was for a non-Departmental purpose.

The Respondent reiterated that when he went to Atlanta in October 2005, he left his firearm in a bag behind the safe in the closet. Antonia and his son, both teenagers at the time, were living in the house.

Upon questioning by the Court, the Respondent testified that the garage door opened into the house. He stated that the arrangement for Parris to make payments to him was not spelled out in the deed or any other legal document. The Respondent testified that the first time he noticed a hole in the bedroom ceiling was when he returned from Atlanta on October 11, 2005.

The Respondent admitted that [REDACTED] testified in the Grand Jury that he observed what appeared to be a patched hole in the bedroom ceiling. He described the size of the hole as "a heel of a shoe." The Respondent did not recall that [REDACTED] asked him "what happened with the work that was done to cover the hole in the ceiling."

FINDINGS AND ANALYSIS

Specification Nos. 1, 2, 3, 4 & 7

These specifications relate to an incident that allegedly occurred in the early morning hours of December 25, 2004. The Department alleges that the Respondent got into a domestic altercation with his girlfriend, Detective Anayansi Parris, culminating in the discharge of one round from his weapon. Specification 1 charges the Penal Law offense of Harassment in the Second Degree (Penal Law § 240.26 [1]), relating to the Respondent's alleged striking of Parris in the chest. Specification 2 similarly charges Menacing in the Second Degree, relating to the Respondent allegedly pointing the weapon at Parris (Penal Law § 120.14 [1]). Specification 3 charges the Respondent with failing to safeguard the weapon, and Specification 4 charges him with failing to report the incident to the Department as an unusual occurrence. Specification 7 charges the Respondent with Reckless Endangerment in the Second Degree (Penal Law § 120.20) in that he wrongfully produced his service weapon, resulting in its discharge.

The conflicting testimony that bears on this part of the case is relatively uncomplicated. Parris stated that she and the Respondent were arguing over finances and other issues within their relationship. Parris said that the Respondent struck her across the chest, causing her to fall and scrape her leg. Parris stood up, next to the bed. The Respondent was standing three to four feet away by the desk. Then, the Respondent said "[O]h, yeah . . . how about I just --" at which

point Parris saw him pointing his gun at her and walking toward her. She said, "I can't believe you. You're wrong, and you are going to shoot me." Now, less than a foot away from each other, Parris tried to push the Respondent's arm away, but he resisted and brought his arm back. Once more, she tried pushing his arm away, and the Respondent resisted. Then they began "struggling back and forth with his gun." Parris lost her balance, and began to fall back onto the bed. As she fell back, she heard a gunshot. Parris' daughter, Antonia, called out for Parris from downstairs, and the Respondent yelled back, "Your mom is okay. It's all right." The Respondent walked away, saying "see what you made me do." Antonia kept calling for Parris, and Parris walked to the steps and told her, "It's okay."

The Respondent denied that there was any firearms discharge, but agreed that he and Parris were arguing. He testified that he left the bedroom, intending to sleep in another room, and slammed the door behind him. He said as he was checking his e-mail in the other room, Parris knocked on his door and continued arguing, then left. The Respondent continued checking his e-mail, and fell asleep. The Respondent testified that Antonia was asleep during these exchanges.

Antonia, Parris' daughter, stated that on the night of the incident, she heard her mother say, "Are you going to shoot me?" about three times. Then she heard a loud noise, which she characterized as a gunshot. She believed this sound was a gunshot, rather than a door slamming, because she had heard doors slam in her house before and this new sound was qualitatively different. Antonia testified that she yelled her mother's name, but the Respondent told her that everything was alright. Parris came downstairs as well, and told Antonia that "everything will be okay" and "we will talk about it tomorrow."

The next morning, as Parris drove Antonia to her friend's house, both women testified that Antonia asked Parris what had occurred the previous night, and that Parris said the Respondent tried to shoot her.

Aside from Antonia and a friend of Parris who worked as a gas station attendant, Parris testified that she did not inform anyone of the firearms discharge until she told [REDACTED] the mother of the Respondent's son, [REDACTED]. Credle was a civilian supervisory member of the Department. This disclosure occurred in October 2005, after the Respondent had started legal proceedings to evict Parris from the home. Parris also testified that at that time, the Respondent was trying to gain custody of [REDACTED] from [REDACTED] and was seeking Parris' help to portray a stable family relationship before Family Court.

Parris testified that in the end of September 2005, her Captain, Ameri, asked her if anything was wrong, and she told him about the shooting. She claimed that "the way the conversation ended was I told him but I didn't tell him." After Parris explained that she was formally going to inform the Department, Ameri said, "you never told me this," implying that Ameri was not going to say anything about the matter.

Ameri also testified, and denied that Parris told him anything about a firearms discharge. He said that if she had told him about it, he would have reported it to the Department.

Parris also stated that she told the [REDACTED] County authorities that the Respondent had raped her, but that law enforcement there refused to put that detail in their reports.

Assessing the testimony of each of these witnesses requires, in essence, a subjective analysis. The one piece of neutral, forensic evidence that might have helped in that analysis is the evidence offered regarding the alleged bullet hole in the ceiling of the bedroom.

No live witness appeared on the issue of that hole. Instead, a portion of the transcript of testimony given at the Respondent's criminal trial in ██████████ County was placed in evidence. Several digital photographs were also offered in evidence in relation to this issue.

Bose, the ██████████ County crime-scene officer, testified at that trial that he observed a hole in the bedroom ceiling. Bose believed the hole was caused by a bullet. He made this conclusion "[j]ust based on my experience of the cases that I had handled, that I knew it was." Bose had worked on 150 to 200 cases involving bullet holes.

He also went into an area he described variously as an attic or crawl space, above the bedroom ceiling. He indicated that, "I found a hole in the sheetrock. I observed damage to a beam, a splintering of wood that appeared, in my mind, was made by the bullet that had come through that hole." The height of the crawl space where he found the splintering "was a matter of inches, eight, ten inches. Eight inches, tops." Bose saw no hole in the roof and did not find a shell or spent round in the attic. He testified that he could not take a picture of the splintered wood because he could not fit a camera in the space.

But there are problems with Bose's testimony. The first is that there is no testimony on the trajectory of the bullet. The fact that Bose claims to have had two points, the hole and the splintered wood, some sense of the trajectory of the bullet should have been easy to establish. This could have helped provide independent corroboration or refutation of Parris' claims.

There is no diagram giving the layout of the bedroom. Only one photograph depicts some part of the layout of the room; it is described on the disc as MVC-0015. This photograph appears to correspond with People's Exhibit 5, which Bose described as "an overall picture of the master bedroom showing the bedroom dresser and two windows in the bedroom."² It does

² The Department did not link the individual photographs on the disc to the criminal trial exhibit numbers.

not appear to show where the bullet hole is in the room nor does it show where the bed that Parris claims to have fallen on when the gun went off was in relation to the alleged bullet hole.

Reviewing Bose's testimony, it is apparent that he did not testify as an expert witness. Although he made some mention of his background and training, the Assistant District Attorney did not ask that he be declared an expert nor did the trial judge declare him to be an expert in ballistics or any forensic science. This might account for the fact that the only basis upon which he declared the hole to be a bullet hole was that it looked like other bullet holes he had seen. No scientific explanation of what appears in the photographs to be puckering around the hole was offered. Nor did he offer any testimony to explain the characteristics of a bullet hole or why they would or would not be visible in this case.

There is no testimony as to the likely size of the round that made the hole or if that could or could not be discerned. There is no clear explanation as to why he could not take a picture of the splintered wood nor did he describe any special characteristics to the damage that caused him to believe it was the result of being struck by a bullet. There was no measurement of the hole, no measurement of the distance from the hole to the splintered wood, nor was there any testimony about the distance of the hole from any of the walls.

In her testimony Parris indicated that the Respondent tried on several occasions to plaster over the hole. It is not clear why this small hole would not easily be covered by plaster, but with regard to Bose's testimony there is no indication from him that there was any residue of these multiple repair efforts. Nor is there any assessment from him as to what effect these repair efforts might have had on the appearance of the hole. Indeed at one point Bose testified that

"... the ceiling, to the best of our knowledge, was not touched."³

Bose also vacillated, on cross-examination, about the basis for his belief that the hole was caused by a bullet. After testifying repeatedly that his conclusion that this was a bullet hole was based on the appearance of the hole, he conceded that other things might cause such a hole. He then immediately shored up his conclusion by referring to the splintered beam saying that other things might "cause the hole, but not cause the damage in the beam behind the hole."

He then indicated that nothing else could cause the damage to the beam but he never stated what led him to that belief beyond the fact that it was "his opinion." No photograph was taken of the beam. Bose said that could not be done because he could not get a camera into that space.⁴

Bose's testimony is hardly the strongest or most persuasive evidence that the hole was caused by a bullet. However, even if the Court were to accept that the hole was indeed caused by a bullet the Respondent was not the only person who had access to a gun in that household. Parris, like the Respondent, is a police officer with both access to and knowledge of the use of firearms.

Bose's testimony could not account for who shot the gun, when it was shot, nor does his testimony enlighten us about the circumstance under which the hole was created. In sum there is no real forensic evidence to support Parris' claim.

³ During the cross-examination of the Respondent he was asked about testimony allegedly given by [REDACTED] in the Grand Jury in reference to a patched hole in the ceiling. [REDACTED] did not testify at this proceeding. Further, there is indication that he was talking about a repair the size of a heel, which would be bigger than the alleged bullet hole.

⁴ At the criminal trial, a photograph of the attic/crawl space was put in evidence as Exhibit 12. It is not part of the evidence in this trial. It was taken after Bose finished looking for the projectile, and he agreed that he took the photograph after he moved around the insulation to look for the projectile.

This leaves us to evaluate the testimony of the various witnesses. There are reasons for caution in accepting the testimony of either Parris or the Respondent. The Respondent is an interested witness as he has a great deal at stake in the outcome of this trial.

There is no question that Parris harbored a good deal of anger and bitterness toward the Respondent which would reflect on her credibility. She blamed him for being unfaithful toward her, for stealing the [REDACTED] home from her via the deed transfer, his demand for rent from her and her eviction from that home.

Parris' revelation to [REDACTED] of the Christmas 2004 incident is also suspect. The conversation took place in October 2005, about two months after August 30, 2005, when the Respondent served the eviction notice on Parris (see RX-1). A domestic violence complaint might have allowed Parris to remain in the [REDACTED] home, even though she testified that she had already resolved to leave. Also, Parris' disclosure to [REDACTED] had the potential to harm the Respondent's attempt to gain custody of [REDACTED] and to receive child support from [REDACTED]. The custodial proceedings were pending in October 2005. If Family Court were to have learned from [REDACTED]'s mother) that [REDACTED]'s father (the Respondent) had physically abused his current girlfriend (Parris) and threatened her with a gun, it stands to reason that the Respondent would have been less likely to gain custody.

Also material to the timing aspect is the Respondent's testimony that he told Parris in October 2005 to be out of the house by the time he returned from his vacation trip to Atlanta to visit his mother. It was during the trip, the Respondent testified, that he was contacted by Department investigators and told to surrender himself to the [REDACTED] authorities upon returning to New York.

Other parts of Parris' testimony are dubious. She testified that after the gunshot, she spoke to Antonia, then lay in bed and dozed off. She was equivocal as to whether she actually fell asleep and for how long, but eventually admitted on cross-examination that she was "essentially sleeping." It is hard to believe that having almost just been shot, with the shooter in the next room, Parris would have been able to fall asleep, much less not contact law enforcement or leave the house with her daughter.

The Court also does not credit Parris' testimony that she reported the incident to Ameri, who was her captain in the Vice Enforcement Division. Ameri denied this at trial, and the Court credits his straightforward denial of Parris' claim that, upon learning of an unlawful firearms discharge, Ameri agreed to keep it secret. Ameri had no reason to hide the incident from the Department, and every reason to report it. Further, the Court doubts other parts of Parris' testimony, such as her assertion that she made a rape complaint to the ██████████ County authorities but they refused to take the complaint. Moreover there are questions about the truthfulness of her testimony that the Respondent plastered over the hole but that the hole kept re-appearing.

There is also the matter of Parris' inconsistent statements about the gun used in the shooting incident. At this proceeding Parris testified that it was black but at the criminal trial she testified that she did not know the color of the gun. At the criminal trial she testified that she did not know if the gun was in or out of its holster whereas at this trial she was certain it was not holstered.

While some inconsistencies are to be expected when people testify repeatedly about the same event, inconsistencies such as these do raise questions about the quality of the witness' recollection or the witness' veracity.

In sum there are significant reasons not to rely on Parris' testimony. On the other hand her daughter, Antonia, also testified. Frankly this is the strongest evidence the Department presented. But its value too needs to be carefully considered.

Through Antonia the Department presented evidence that Parris made a "prompt outcry," see generally People v. Rice, 75 N.Y.2d 929, 931-32 (1990) (prompt report by complainant of a rape is admissible as exception to hearsay rule, in order to prove that a timely complaint of rape was made), telling Antonia that Dwight tried to shoot her. But she too was apparently evicted from the house by the Respondent and may be motivated by anger at him or concern for her mother.

Even if she was not, even if she testified honestly and to the best of her recollection, Antonia was not an eyewitness to the shooting. While the outcry lends credibility to Parris, it also presents the possibility that Antonia's belief that the sound she heard was a gunshot (and not a door slamming as defense counsel suggested) was influenced by her mother's statements. Antonia admitted that never before or since had she heard a real gunshot, and she said she was basing her conclusion on film and television versions of gunshots.

Further, Antonia did not testify that she ever viewed the hole in the ceiling, and did not say, for example, that she had not seen it before Christmas 2004. She did not go upstairs at the time of the incident and apparently did not do so afterwards. Nor was there testimony that she saw the bruise Parris claimed she got at the time of that incident. She also stated that there had been "on more than one occasion" heated arguments in the home between Parris and the Respondent.

Not surprisingly the Respondent's account of what occurred on December 25, 2004, differs from that of Parris or her daughter, Antonia. There do not appear any inconsistencies in

his testimony nor are there any apparent inconsistencies with prior testimony or statements he has made on the subject. Nor is there any conflict between his testimony and any extrinsic evidence. In fact one piece of Bose's testimony might support the Respondent.

Parris testified that the Respondent repeatedly tried to hide the evidence of his crime by repeatedly trying to repair the hole. As an experienced police detective he would have known that the bullet or projectile had to also be accounted for. That meant he would have had to go up into the attic. While Bose testified that there is no way of knowing if someone entered the attic to remove the projectile before he got there, he also testified that the attic did not appear to have been disturbed before he got there. He described the attic as full of insulation and he acknowledged that it looked very different after his search for the projectile than it did when he first got there. So on the whole Bose's testimony makes it seem unlikely that the Respondent entered the attic to remove any bullet.

Ultimately in a situation like this the question comes down to whether the Department has proven its case to the standard required in this forum. With regard to these specifications that means Parris' assertions have to have a greater value than the Respondent's denial. There is not sufficient, reliable or independent evidence to support Parris' version and indeed there are some genuine concerns about her credibility.

Other than his interest in the outcome of the case there is no apparent reason to disbelieve the Respondent.

Consequently the Department failed to meet its burden to prove, by a preponderance of the credible evidence, that on December 25, 2004, the Respondent shoved Parris, menaced her with a gun, and fired a round into the ceiling. Thus, the Respondent is found Not Guilty of Specifications 1, 2, 3, 4 and 7.

Specification 5

Specification 5 charges the Respondent with another domestic altercation, viz., shoving Parris into the dog cage on July 25, 2005, causing her to injure her upper leg or buttocks (he is charged with an intentional physical contact, not specifically with injuring her). The Respondent did not deny that Parris received a “scrape” or “scratch,” but he characterized the event as an accident. The Court finds the Respondent Not Guilty.

The Court concludes that the Respondent’s version of events was more likely than that of Parris. Both testified that as the Respondent was exercising in the garage, he and Parris were speaking to each other. Both the Respondent and Parris agreed that Parris went into the house and slammed the door behind her. The door from the garage into the house opened into the house. Parris claimed that the Respondent opened the door and punched her in the chest, causing her to fall onto the cage. The Respondent, on the other hand, claimed that he pushed the door open with his body because it was stuck, and the door knocked Parris onto the cage. He asserted that he did not know she was just on the other side of the door. Antonia Parris testified that when she came upon Parris cleaning her wound, the Respondent stated that he had accidentally bumped her into the dog cage.

The Court finds the Respondent’s version more plausible. Aside from the general credibility assessments of Parris compared to the Respondent (see Specifications 1-4 & 7, supra), the Court notes that Parris testified that the Respondent was still wearing boxing gloves when he punched her. But because Parris slammed the door closed behind her, the Respondent would have had to have opened the door with his gloves still on, which is unlikely if he had to turn a doorknob. The Respondent, on the other hand, testified that he tried to open the door with his gloves on, but could not, so he took one glove off, still was unable to open the door, then pushed

it with his body weight. The Court credits the Respondent's account that Parris was thus accidentally pushed into the cage. The Court also notes that the Respondent's claim of accident is consistent with Antonia's statement that he told her right after it happened that it was an accident. Finally, both Parris and the Respondent testified that he helped her clean her wound, an unlikely act if he had just intentionally punched her in the chest. It is also unlikely that the only injury suffered by Parris as a result of a punch to the chest by the Respondent, a much larger person and an amateur boxer, would have been the leg injury. Therefore, the Court finds the Respondent Not Guilty of second-degree harassment, as charged in Specification 5, as the Department failed to prove that he intentionally subjected Parris to physical contact.

Specification No. 8

The eighth specification charges the Respondent with failing to report the July 25, 2005, incident to the Department, as allegedly required by *Patrol Guide* § 212-32. The Respondent is found Guilty.

Patrol Guide § 212-32 dictates that upon becoming involved in an off-duty "unusual police occurrence" outside the City of New York, a member must notify the Operations Unit. The *Patrol Guide* defines "unusual police occurrence" as including "family disputes and other incidents of domestic violence in which the officer is either a participant or a witness." The question here is whether that definition includes Parris' accidental tumble into the dog cage, which was caused by the Respondent pushing open the door when he did not know Parris was behind it.

The Court concludes that the incident falls within the scope of the *Patrol Guide* section. The incident took place at a time of high domestic tension within the household. The

Respondent testified that the financial issues between him and Parris led to arguments. Moreover, Parris had accused him of infidelity. After the Christmas incident, in early 2005, the Respondent began demanding payments from Parris for money he felt she owed him. The July 2005 incident itself took place after some kind of argument in the garage. Here, there was an accidental injury, but it must have caused at least some bleeding because the Respondent testified that he helped Parris clean her wound. The incident took place in the context of a "family dispute." Thus, the Respondent should have notified the Operations Unit. See Disciplinary Case No. 82586/07 (after pleading guilty and testifying in mitigation, officer forfeited 10 vacation days for, inter alia, failing to notify Department, where, after argument at his girlfriend's house over them breaking up, officer slammed a statuette onto girlfriend's bed in "frustration"; the statuette bounced off bed, hit the television, cracked the television frame, then bounced into armoire and cracked armoire's mirror, then the statuette broke).

Specification No. 6

The sixth specification charges the Respondent with use of the Department's computer system for personal business. The Respondent admitted that he conducted a BADS inquiry on [REDACTED] the ex-husband of Anayansi Parris, so he could be a witness in the civil and criminal court proceedings. He admitted that this was a non-Department purpose. His attorney conceded on summation that the Department had proven the Respondent Guilty of Specification 6, and was "not suggesting he should be found not guilty of it, but within reason here Detective Hovington wasn't doing anything all that terrible." Accordingly, the Court finds the Respondent Guilty of Specification 6.

Specification No. 9

The ninth specification charges the Respondent with failing to safeguard a weapon, his Kahr K-9, on October 7, 2005. Although the testimony does not directly so state, it appears that after the Department was made aware of Parris' allegation of the Christmas 2004 firearms discharge, the [REDACTED] home was searched and the Kahr was found. The Respondent testified that he had gone on vacation to Atlanta to visit his mother. Usually when he was on vacation, he would store his firearm at work or in a safe at home. That specific vacation, however, he said that he was running late for his flight and did not have time to drop the gun off at his command. He had also left the keys to his safe in his office. The Respondent admitted that he placed the firearm in his briefcase, and placed the briefcase in the closet behind the safe.

As with the BADS inquiry, the Respondent's attorney conceded on summation that the Respondent was Guilty of failing to safeguard the Kahr. The Court agrees, and finds the Respondent Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on January 20, 1987. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of failing to report the dog cage incident to the Operations Unit, of failing to safeguard his firearm, and of conducting a BADS inquiry for non-Department business. The penalty should also take into account the Respondent's disciplinary

history, see Confidential Memorandum, infra. Taking the three specifications as a whole, the Court recommends a penalty of 30 days, consisting of the time the Respondent served after being suspended in this matter. See Disciplinary Case No. 82586/07 (after pleading guilty and testifying in mitigation, officer forfeited 10 vacation days for, inter alia, failing to notify Department, where, after argument at his girlfriend's house over them breaking up, officer slammed a statuette onto girlfriend's bed in "frustration"; the statuette bounced off bed, hit the television, cracked the television frame, then bounced into armoire and cracked armoire's mirror, then the statuette broke); Disciplinary Case No. 63084/89 (10 days for Detective, with no prior record, who pleaded Guilty to failing to safeguard weapon, where he left it on the shelf of his closet underneath his shirts, and it was later stolen during a burglary); cf. Disciplinary Case No. 74270/99 (10 days for Police Officer who conducted FINEST search to see if her boyfriend had a criminal record; this was not done for personal profit or to further a criminal scheme).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED

FEB 10 2009

RAYMOND W. KELLY
POLICE COMMISSIONER